

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:96CR66-17-MU**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
vs.)
)
MONICA MAYERS,)
)
 Defendant.)

ORDER

THIS MATTER comes before the Court on Defendant's Motion Requesting the Court to Order the Government to Show Cause Why a Motion for Reduction of Sentence Has Not Been Filed, filed April 15, 2003.

In her Motion, Petitioner asks the Court to order the Government to show cause why a Rule 35(b) motion has not been filed in her case. For the reasons set forth below, the Court declines to take such an action.

A district court may inquire into the Government's motives not to file a Rule 35(b) motion only in limited circumstances. See United States v. Wallace, 22 F.3d 84, 87 (4th Cir.1994). A court may review whether the prosecutor's decision¹ was based upon an unconstitutional motive. Id. In the instant case, Defendant does not allege that the Government's decision not to file a Rule 35 motion was predicated upon an

¹ As is typical, the plea agreement in the instant case explicitly sets forth that the Government, in its sole discretion, retained the right to determine whether any assistance had been substantial. (Pl. Agr. ¶¶ a, f).

unconstitutional motive. Consequently, this Court is without authority to inquire into the Government's motives.

Furthermore, it appears that Defendant failed two urine tests while out on bond and that she may have bought or sold drugs while out on bond. (Mot. to Cont. Sent. Hearing ¶¶ 7, 10). As a result, the Government explicitly declined to file a Rule 5K1 motion at her sentencing hearing. (Sent Hearing Trans. pp. 2, 4).

IT IS, THEREFORE, ORDERED that Defendant's Motion Requesting the Court to Order the Government to Show Cause Why a Motion for Reduction of Sentence Has Not Been Filed is **DENIED**.

Signed: April 10, 2006

A handwritten signature in black ink, appearing to read "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

